

This record is a partial extract of the original cable. The full text of the original cable is not available.

212219Z Dec 05

UNCLAS BOGOTA 011850

SIPDIS

DEPT FOR CA/OCS/CI

E.O. 12958: N/A

TAGS: [CASC](#) [KOCI](#) [CO](#)

SUBJECT: 2006 HAGUE COMPLIANCE REVIEW -- COLOMBIA

REF: STATE 223680

1. Per reftel, paragraph 4, Bogota proposes the following text for use in compiling the next Hague Compliance Report on Colombia. The proposed language reflects significantly improved work on behalf of the Colombian executive and legislative branches on Hague issues, but continuing and serious problems in the judicial branch. Embassy Bogota recommends that Colombia's status be shown in the report as "not fully compliant."

2. Begin text of proposed compliance report language:

The Colombian Central Authority, located in the Colombian Family Welfare Institute (ICBF), has consistently shown a high degree of cooperation on Hague cases in 2005. In one case, ICBF facilitation of a home visit by an Embassy consular officer and the resulting report led the State of California to retract its Hague petition for the children's return. California instead decided to leave the children with their grandmother in Colombia, who was serving in loco parentis. In another case, ICBF intervention resulted in a decision by the parents to reconcile, and the Embassy and the Department of Homeland Security were able to facilitate the taking mother's return to the United States with the child. Communication among the ICBF, the U.S. Embassy, CA/OCS/CI and the National Center for Missing and Exploited Children has improved markedly. The ICBF moves Hague applications forward in a timely manner.

Furthermore, the Colombian Congress - responding in part to lobbying by the Embassy, the ICBF, and the Colombian Foreign Ministry - completed work on new Hague implementing legislation. The law assigns administrative responsibility for Hague cases to the ICBF, and judicial responsibility for Hague cases to Colombia's family courts, or to civil courts in locations outside the geographic range of family courts. This law should put an end to the delays that occurred in the past, when courts would avoid assuming jurisdiction in Hague cases and thereby cause injury to taken children and their left-behind parents.

Despite these developments, serious problems with Colombian compliance remain, especially in the courts and with INTERPOL Bogota's ability to locate abducted children. ICBF insistence on attempting family reconciliation as a first step in all cases, and the resulting delay, provide Colombian judges with an improper rationale for determining that a change in habitual residence has occurred, even in cases in which a Hague application was filed within one year of abduction or wrongful retention. Such reasoning was employed by a Colombian court in a May 2005 ruling and appeared to have been part of the judge's basis for rejecting a timely and proper Hague application.

Colombian judges have been inclined to make their decisions based on their own sense of "the best interests of the child," drawing on hortatory language in the UN Convention on the Rights of the Child, rather than on the more precise and binding language found in the Hague Convention. Furthermore, judges tend to presume that a child is better off remaining in Colombia, even in the absence of evidence of risk if the child were to be returned to the United States. Although steps have been taken to educate judges about the Hague Convention, including a May 2005 conference hosted by the Ministry of Foreign Relations in coordination with the Colombian and U.S. Central Authorities and Embassy Bogota, far more needs to be done. The ICBF recognizes the problem and has initiated a series of workshops around the country for judges and family welfare officials. However, until a judicial precedent is clearly established and followed in favor of Colombia's Hague Convention commitments, Colombia cannot be considered fully compliant with its Hague responsibilities.

3. Bogota will provide a translation of the new Colombian Hague implementing legislation septel.

WOOD